

**REMARKS**

Initially, in the Office Action dated June 10, 2004, the Examiner has required a new title asserting that the existing title is not descriptive. The Examiner rejects claims 1-41 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,130,898 (Kostreski et al.).

By the present response, Applicants have amended the title of the invention. Further, Applicants have amended claims 6, 9, 10, 14, 16 and 17 to further clarify the invention. Claims 1-41 remain pending in the present application.

**Specification Objections**

The Examiner has required a new title asserting that the existing title is not descriptive. Applicants have submitted a new title of the invention in accordance with the Examiner's request.

**35 U.S.C. §102 Rejections**

Claims 1-41 have been rejected under 35 U.S.C. §102(e) as being anticipated by Kostreski et al. Applicants respectfully traverse these rejections.

Kostreski discloses a public wireless packet data network combined with a broadband digital broadcast network to provide interactivity, where the broadcast network utilizes multiple transmitters at separately located sites simultaneously broadcasting the same multi-channel, multi-program signal. Broadcast waves from the transmitters propagate throughout substantially overlapping portions of the service area. Customer premises receiving systems include a receiving antenna and one or more digital entertainment terminals. The terminal includes a channel

selector and digital receiver for capturing a digital transport stream from a selected channel in response to user inputs. A processor converts selected program information from the transport stream for presentation, e.g. via a television set. The CPU also communicates signaling information for interactive services via an RF packet data modem included in the terminal and the public wireless packet data network.

Regarding claims 1, 9 and 14-17, Applicants submit that Kostreski does not disclose or suggest the limitations in the combination of each of these claims of, *inter alia*, delivering content to a terminal, including a plurality of transmitters, the transmission characteristics of which define a network topology, or a network controller responsive to distribution of demand for specific content to determine an appropriate network topology by varying the transmission characteristics of at least one of the transmitters, or analyzing the content to be delivered together with its destination and varying the transmitter transmission characteristics accordingly, or determining a distribution of terminals receiving common content and varying a set of operational characteristics of a transmitter responsive to the distribution of terminals. The Examiner fails to specifically identify where transmitters, the transmission characteristics of which define a network topology is disclosed in Kostreski but only asserts transmitters TX1-TX3. However, Kostreski merely discloses that each transmitting antenna has an area of service that may be omni-directional or directional as shown in figs 5a, 5b. These are not transmitters with transmission characteristics that define a network topology, as recited in the claims of the present

application. The disclosure in Kostreski merely relates to a service area. This has nothing to do with transmission characteristics defining a network topology.

Moreover, the Examiner asserts that a network controller responsive to distribution of demand for specific content to determine an appropriate network topology by varying the transmission characteristics of at least one of the transmitters is disclosed in Kostreski at col. 10, lines 9-36, col. 11, lines 1-45, figs 4, 5. However, these portions of Kostreski merely disclose that a PC 57 and RF modem 55 may conduct a session with interactive headend 5 to order delivery of a message or video to a customer, the network components and operation, and details on the omni-directional and directional operation of the antennas. The headend 5 in Kostreski is not a network controller, as recited in the claims of the present application.

Further, these portions of Kostreski do not disclose or suggest a network controller responsive to distribution of demand for specific content, or a network controller determining an appropriate network topology by varying the transmission characteristics of at least one of the transmitters. Headend 5 in Kostreski merely receives an order for a message or video, and delivers the message or video to a customer. This is not a network controller responsive to distribution of demand for specific content, or a network controller determining an appropriate network topology by varying the transmission characteristics of at least one of the transmitters, as recited in the claims of the present application.

In addition, Kostreski does not disclose or suggest analyzing the content to be delivered together with its destination and varying the transmitter transmission characteristics accordingly. The Examiner asserts the same portions asserted previously, col. 11, lines 1045, figs 5A, 5B, of Kostreski as disclosing these limitations. However, as noted previously, these portions merely disclose details on the omni-directional and directional operation of the antennas. The portion that the Examiner seems to refer to as being relevant states "[r]eferring to FIG. 5A, the circle PA defines the Protected Area or primary area which may be serviced from a transmitting antenna TX1. At the present the radius of this circle is 15 miles. However, usable signal and acceptable reception generally occurs to a radius of 40 miles which is here defined by the circle MA indicating the Maximum Area. The region between the 15 mile radius and the 40 mile radius forms a 'secondary' service area." The Examiner reads limitations into the reference by asserting that these portions disclose that "overlap cells takes advantage of choosing strongest reception frequency, where receiver of signals is weak due to topology barrier." This is not disclosed or suggested by the cited portions of Kostreski. The Examiner uses impermissible hindsight in reading limitations in the claims of the present application back into the cited reference. Kostreski does not disclose or suggest analyzing the content to be delivered together with its destination and varying the transmitter transmission characteristics accordingly, as recited in the claims of the present application. Moreover, Kostreski does not disclose or suggest determining a

distribution of terminals receiving common content and varying a set of operational characteristics of a transmitter responsive to the distribution of terminals.

Regarding claims 2-8, 10-13 and 18-41, Applicants submit that these claims are dependent on independent claim 1, 9 and 17 and, therefore, are patentable at least for the same reasons noted previously regarding these independent claims. For example, Kostreski does not disclose or suggest where the network controller is operable to modify the topology to reduce the number of cells in an area to which the same content is being delivered, or where the network controller is operable to modify the topology to increase the number of cells in an area to which different content is being delivered, or where the transmitter characteristics are varied in respect of one or more of the following, namely frequency, antenna directivity or transmission power.

In view of the foregoing amendments and remarks, Applicants submit that claims 1-41 are now in condition for allowance. Accordingly, early allowance of such claims is respectfully requested.

U.S. Application No. 09/893,590

To the extent necessary, Applicants petition for an extension of time under 37 CFR 1.136. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, or credit any overpayment of fees, to the deposit account of Antonelli, Terry, Stout & Kraus, LLP, Deposit Account No. 01-2135 (referencing attorney docket no. 0171.40294X00).

Respectfully submitted,

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